To: United States Department of the Treasury Internal Revenue Service
From: Southern Education Foundation
Date: 7/2/2026
Re: Deputy Assistant Secretary for Tax Policy Kevin Salinger's Preview Remarks of Forthcoming Section 25F Guidance

Thank you for providing the Southern Education Foundation and our critical partners, such as the National Student Support Accelerator and the Johns Hopkins Institute for Education Policy, the opportunity to discuss the Education Freedom Tax Credit program with you last month. We are equally grateful for the invitation to the roundtable conversation, where Deputy Assistant Secretary Kevin Salinger offered an initial preview of the forthcoming regulations for the education tax credit program. Today, however, we submit a set of considerations and recommendations to improve the preview of the regulations and to inform the applicable proposed regulations to be released later this year.

SEF is the nation's oldest education opportunity organization, founded in 1867 with the mission of advancing educational opportunity across the South. We envision a world where every child, regardless of background, has access to the conditions and opportunities necessary to thrive from cradle to career. SEF works across the entire education continuum, from early learning to and through postsecondary completion, to ensure every student, regardless of race, income, or zip code, receives a high-quality education that unlocks opportunity and success.

As the federal tax-credit program becomes fully operational in 2027, we want to ensure that programs offer public school students high-quality opportunities to attain mastery of academic content, improve academic choice for working parents, and minimize opportunities for waste, fraud, and abuse. As such, we offer the following considerations to inform adjustments to the preview and final regulations for the federal education tax credit program. Deputy Assistant Secretary Kevin Salinger's remarks are noted in bold below.

<u>Safe harbor for 90% in a segregated account.</u> "We expect the proposed rules will generally measure the 90-percent spending requirement against the organization's total receipts, unreduced by expenses. But if the organization's activities are largely scholarship-granting activities, the organization could use a safe harbor under which 'income of the organization' is measured by the amount held in a section 25F segregated account, including qualified contributions and earnings."

SEF Comments

Treasury's proposed approach to the 90 percent spending requirement raises concerns about administrative burden and unintended barriers to participation. While the safe harbor may be workable for organizations whose primary function is to distribute scholarships, omitting the safe harbor for other organizations, such as those focusing on high-impact tutoring or afterschool programs, will be overly burdensome for nonprofit organizations that serve students through a broader range of education supports.

Requiring non-profit organizations that offer a large range of activities to create new 501(c)(3) organizations can disadvantage smaller, community-based organizations and those not structured as stand-alone scholarship entities. These organizations would not be able to use their existing staffing and operational infrastructure to support 25F allowable uses, adding additional fundraising and marketing barriers to operating an SGO. Furthermore, the approach taken in the preview risks privileging existing and specialized SGOs that primarily serve students at private and home schools, while limiting the participation of nonprofits that have a history of effectively serving local communities and public school students. Prior experience issuing scholarships does not offer any inherent advantage in an organization's ability to effectively serve public school students through this program.

Recommendations:

- Extend the safe harbor provision to qualified non-profit organizations, including those with a demonstrated history of administering high-impact tutoring. Without such flexibility, the safe harbor framework may unintentionally narrow the range of participating organizations and reduce the program's ability to serve students across diverse education settings.
- Allow SGOs up to 18 months to distribute scholarships to families or third-party providers. Based on feedback from school districts and high-impact tutoring providers, 18 months is sufficient time to effectively process, manage, and ensure that contributions serve students across multiple educational settings.

<u>"Located in the State" definition</u>. "We expect the proposed rules will define an SGO as 'located in' a State if it is authorized to do business in that State and complies with generally applicable State charitable-organization rules, including rules for transparency, accountability, and fraud prevention. At the same time, States may not impose substantive SGO-specific restrictions that are more restrictive than section 25F's requirements."

SEF Comments

SEF is concerned that the proposed definition of "located in a state" establishes a low SGO participation threshold, requiring only that an SGO be authorized to do business in a state and comply with general charitable organization rules, while explicitly limiting states' ability to adopt SGO-specific requirements. As currently structured, this approach makes it difficult for states to avoid waste, fraud, and abuse.

Additionally, states that opt into this program will be required to dedicate resources to administer key program functions, including maintaining SGO lists, overseeing compliance audits, and managing other administrative functions without any additional federal aid. State participation results in unexpected expenses due to staff and management costs, while providing virtually no authority to manage funds or SGOs consistent with the state's needs and priorities.

We believe states should be explicitly permitted to establish universal SGO-specific guidelines to track and monitor taxpayer dollars, build the infrastructure necessary to meet future demand, and provide parents with a baseline of knowledge to effectively select the most responsive SGO for their children.

Recommendations:

- Allow states to require SGOs to provide publicly accessible, high-level information about the SGOs' purpose, program design, and demonstrated value, including the quality and scope of services provided. This would not be a mandate but rather an option should states decide to add this basic layer of public information.
- Clarify that states may impose additional data collection requirements on all SGOs. Such reporting metrics may include academic and student outcome data, such as common annual assessment results, and graduation rates disaggregated by race, sex, and national origin.

Definition of school. **"We also expect to address the types of schools that may be served by scholarships under the program. We expect the proposed rules will define 'school' consistent with section 530 to include public, private, and religious schools providing K–12 elementary or secondary education as determined under State law. Accordingly, a homeschool would be treated as a school if it is treated as a school under State law."**

SEF Comments

The proposed definition of "school" relies on Section 530, which fundamentally and appropriately defers to state law to determine what constitutes an elementary and secondary school. Under this approach, the Treasury has indicated that nontraditional settings, such as homeschooling, may qualify when states treat them as schools.

Consistent with this same rationale, we believe the Treasury should explicitly recognize that in states where pre-kindergarten (pre-K) is included in the definition of elementary education, pre-K tuition and all other eligible expenses related to pre-K attendance should also qualify for scholarship funds. Failing to do so would create inconsistencies in the application of state definitions of elementary schools and limit the flexibility of states that have intentionally integrated pre-K and K-5 funding, school improvement strategies, and data and accountability systems. Allowing pre-K costs to be treated as eligible expenses in these states would better align the program with state education frameworks and promote access to early learning opportunities critical to long-term K-12 student success.

Recommendation:

- Clarify that pre-K tuition and other expenses related to pre-K attendance are allowable uses of scholarship funds in states where pre-K is defined in the state as part of elementary or secondary schools.

Verification of student's income qualification through direct income verification, categorical eligibility, foster-child safe harbor, and additional safe harbors. "We expect the proposed rules will allow SGOs to verify a student's household income directly through documents such as paystubs, tax returns, IRS transcripts, Forms W-2, or verified through crediting agencies or commercial data sources."

SEF Comments

SEF supports Treasury's inclusion of multiple pathways for demonstrating income eligibility. Allowing a diversity of verification methods, including direct verification and categorical eligibility, can make it easier for families, particularly those with limited resources, to access the program.

SEF also supports the use of safe harbors that streamline eligibility determinations for clearly eligible students, including those receiving federal assistance, such as TANF, Medicaid, and SNAP, for low-income individuals. In particular, providing a safe harbor for students attending schools in low-income areas can help ensure that the program more effectively reaches communities with the greatest need while simplifying administrative paperwork for SGOs and eligible families. Together, these approaches have the potential to lower barriers to participation, improve program efficiency, and reduce program implementation costs.

Recommendation:

- Maintain the diversity of ways families can demonstrate income eligibility, and incorporate a safe-harbor automatic eligibility for students attending public schools in high-poverty neighborhoods.

Preventing fraud and abuse. "Each SGO would have to obtain an annual financial and programmatic audit by a qualified independent third party and provide it to each covered State on whose list it appears. For smaller SGOs, the proposed rules would allow a more streamlined alternative: the audit could be conducted by an internal committee unrelated to the organization's management, with the report signed under penalties of perjury."

SEF Comments

SEF appreciates Treasury's efforts to address waste, fraud, and abuse through audit and reporting requirements, which are an important baseline for program integrity. However, the current approach appears to focus primarily on financial compliance, without fully accounting for broader risks related to program effectiveness and access. Financial oversight, in this case, an audit alone, will not capture whether resources reach the students with the greatest needs or achieve meaningful educational outcomes. Without greater visibility into how SGOs define success and measure progress, it will be difficult for parents to assess whether the program is operating efficiently and in alignment with its stated goals.

Additionally, the program's structure raises important considerations regarding public accountability and student protections. Broader system-level implications, including potential effects on public school enrollment and funding, may not be fully captured under the current framework. And finally, ensuring that all participating entities uphold fundamental civil rights protections is essential to maintaining public trust and safeguarding access to educational opportunities. Taken together, these considerations underscore the importance of a comprehensive approach to preventing waste, fraud, and abuse that extends beyond pure financial audits.

Recommendations:

- Require SGOs to clearly define and publish their objectives, identify the student populations they intend to serve, establish measurable outcomes, and publicly report on their progress.
- Ensure families and donors have access to clear, accessible, and reliable information that enables them to verify whether SGOs are fulfilling their stated objectives and delivering on their commitments.
- Require SGOs serving at least 20 students to report disaggregated data on scholarship recipients, including by race, sex, socioeconomic status, disability status, English learner status, geography, and prior public school enrollment, to ensure transparency and enable meaningful oversight of the program.
- Require states to report and make publicly available data on public school enrollment changes and any associated loss of federal funding to local school districts.
- Make explicit that all SGOs and participating private schools receiving federal funds from this program must comply with federal and state civil rights laws.

<u>Section 530 guidance.</u> "We recognize that additional guidance under section 530 regarding the scope of eligible expenses will be important, and we expect that to be a separate workstream that will follow the issuance of the section 25F proposed regulations. Consistent with the statutory text of section 530, we fully intend that scholarships may be used to support additive academic tutoring and special needs services, and we expect future guidance to address those issues in more detail."

SEF Comments

Clear guidance is needed to distinguish between core instructional services and supplemental supports. Nonetheless, it would be inconsistent with the intent of Section 530 for public schools to charge families or SGOs for core instructional services that students are already entitled to receive. By contrast, supplementary services, such as high-impact tutoring, after-school programming, or summer learning opportunities, represent appropriate uses of funds when they extend beyond a state's constitutional and legal obligations. These types of additive services may occur during the school day, extended learning time, or outside of school hours and settings.

We also understand that the Treasury will issue further guidance on 530 for eligible uses of funds. SEF encourages Treasury to consider "additive services" or "supplementary services" as educational goods and services that supplement a student's educational program by expanding access, intensity, or opportunity beyond what the student's school offers, and that are not a replacement for, or duplication of, services the student is otherwise entitled to receive under federal or state law. This distinction is critical to ensuring that program funds are used to enhance, not supplant, existing education obligations by states.

The breadth of allowable expenses under Section 530 extends beyond traditional school-based services and includes a wide range of providers that may not be subject to consistent oversight or quality standards. This raises important considerations regarding transparency, consistency, and program effectiveness. Without clear parameters that distinguish allowable supplemental services from core educational responsibilities, and without sufficient visibility into how funds are used and what outcomes they produce, it may be difficult to ensure that resources support meaningful educational progress and align with the program's intended purpose.

Recommendations:

- Define or make clear that "additive services" or "supplementary services" means educational goods and services that enhance a student's educational experience by expanding access, intensity, or opportunity beyond what the student's school offers, and that do not replace or duplicate services the student is otherwise entitled to receive under federal or state law. Scholarship funds may appropriately support supplemental, additive services that extend beyond a state's legal obligations, such as high-impact tutoring, after-school programming, summer learning opportunities, and other enrichment activities. These services may be delivered during the school day, extended learning time, or outside of regular school hours and settings.
- Define or make clear that "high-impact tutoring" means instruction delivered one-on-one or in very small groups (no more than four students) toward a targeted academic goal. High-impact tutoring should be intensive (occurring at least three times per week over a sustained period), relationship-based with consistent, well-trained tutors, and grounded in individualized, data-informed instruction. This model is designed to produce meaningful learning gains by supplementing, rather than replacing, students' core classroom experiences and is most effective when aligned with the students' existing curriculum and delivered during the school day, where possible.

- Clarify that it is illegal for public schools to charge families for core instructional services that students are entitled to receive as part of a free public education. Scholarship funds should not be used to supplant constitutionally or statutorily required educational services.

Conclusion

SEF urges the Department of the Treasury to include our recommendations in the forthcoming regulations to ensure that the implementation of Section 25F not only avoids waste, fraud, and abuse but also reflects the principles of transparency, effectiveness, and state autonomy. Without stronger safeguards and clearer standards, the program risks exacerbating existing inequalities and limiting states' ability to meet the needs of their students and communities. We appreciate your consideration of these comments and welcome the opportunity to provide additional clarity as federal guidance continues to evolve for this new policy.

Sincerely,

Raymond Pierce

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